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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 ARMANDO MUNOZ,

12 Petitioner,

13 v.

14 RAYMOND MADDEN,

15 Respondent.
16

Case No.: 16cv2447-CAB-NLS

**ORDER DECLINING TO ADOPT
REPORT AND
RECOMMENDATION [Doc. No. 9]
AND DENYING MOTION TO
DISMISS [Doc. No. 5]**

17 Pending before the Court is the Report and Recommendation (“R&R”) of
18 Magistrate Judge Nita L. Stormes, filed on March 2, 2017, recommending that the Court
19 grant Respondent’s motion to dismiss. [Doc. No. 9.] On April 19, 2017, Plaintiff filed
20 objections to the R&R. [Doc. No. 13.] Respondent has not filed any reply to the
21 objections. Having considered the parties’ arguments and for the reasons stated herein,
22 the Court disagrees with the R&R and **DECLINES** to adopt it. Instead, Respondent’s
23 motion to dismiss [Doc. No. 5] is **DENIED**.

24 **DISCUSSION**

25 Petitioner is a state inmate challenging an institutional disciplinary action in which
26 he was found guilty of possession of drug paraphernalia. Specifically, he contends that
27 prison officials improperly found he constructively possessed drug paraphernalia found in
28 his cell and failed to identify any evidence showing that Petitioner knew the drug

1 paraphernalia was in his cell. [Doc. No. 1 at 6.] In the motion to dismiss, Respondent
2 argues that the Petition fails to state a federal claim because Petitioner is essentially
3 asking the court to review a state-court determination on a question of state law. [Doc.
4 No. 5-1 at 2.] Respondent is correct that the Petition does seek adjudication of whether
5 prison officials misapplied the criteria for “constructive possession” under California
6 Code of Regulations, title 15, section 3000 [Doc. No. 1 at 8], and whether they
7 mistakenly concluded that he was responsible for his cellmate’s property, in violation of
8 California Code of Regulations, title 15, section 3022 [Doc. No. 1 at 9-10]. To the extent
9 the Petition claims a violation of state law, there is no federal claim. *Estelle v. McGuire*,
10 502 U.S. 62, 67-68 (1991).

11 However, a prisoner may challenge a prison disciplinary conviction by petition for
12 writ of habeas corpus if the conviction resulted in the loss of good time credits because
13 credits impact the duration of the prisoner's confinement. *Preiser v. Rodriguez*, 411 U.S.
14 475, 487–88, 93 S. Ct. 1827 (1973) (suit seeking restoration of good time credits was
15 “within the core of habeas corpus in attacking the very duration of their physical
16 confinement itself”). While prisoners may not be wholly deprived of their constitutional
17 rights, “there must be mutual accommodation between institutional needs and objectives
18 and the provisions of the Constitution” *Wolff v. McDonnell*, 418 U.S. 539, 556, 94 S.
19 Ct. 2963 (1974). “Prison disciplinary proceedings are not part of a criminal prosecution,
20 and the full panoply of rights due a defendant in such proceedings does not apply.” *Id.* A
21 prisoner's due process rights must be accommodated to the “legitimate institutional
22 needs” of a prison. *Bostic*, 884 F.2d at 1269 (overruled on other grounds by *Nettles*, ____
23 F.3d ____, 2016 WL 4072465 (July 26, 2016)), citing *Superintendent v. Hill*, 472 U.S.
24 445, 454–455, 105 S. Ct. 2768 [] (1984).

25 With respect to prison disciplinary proceedings, the minimum procedural
26 requirements that must be met are: (1) written notice of the charges; (2) at least 24 hours
27 between the time the prisoner receives written notice and the time of the hearing, so that
28 the prisoner may prepare his defense; (3) a written statement by the fact finders of the

1 evidence they rely on and reasons for taking disciplinary action; (4) the right of the
2 prisoner to call witnesses and present documentary evidence in his defense, when
3 permitting him to do so would not be unduly hazardous to institutional safety or
4 correctional goals; and (5) legal assistance to the prisoner where the prisoner is illiterate
5 or the issues presented are legally complex. *Wolff*, 418 U.S. at 563–71. Confrontation and
6 cross examination are not generally required. *Id.* at 567.

7 In addition, due process requires that the decision be supported by “some
8 evidence.” *Hill*, 472 U.S. at 455, 105 S. Ct. 2768, citing *United States ex rel. Vajtauer v.*
9 *Commissioner of Immigration*, 273 U.S. 103, 106, 47 S. Ct. 302, 71 L.Ed. 560 (1927). In
10 *Hill*, the United States Supreme Court explained that this standard is met if “there was
11 some evidence from which the conclusion of the administrative tribunal could be deduced
12” *Id.* Ascertaining whether this standard is satisfied does not require an examination of
13 the entire record, independent assessment of the credibility of witnesses, or weighing of
14 the evidence.” *Id.* at 455–56. Instead, “the relevant question is whether there is any
15 evidence in the record that could support the conclusion reached by the disciplinary
16 board.” *Id.*

17 Here, while Petitioner does appear to seek adjudication of state law claims, he also
18 alleges that his “right to due process was violated” [Doc. No. 1 at 6] and that there was
19 “no evidence” that Petitioner was aware of the contraband [Doc. No. 1 at 8]. Thus,
20 Petitioner has made sufficient allegations to state a federal due process claim under *Hill*,
21 472 U.S. at 455. Whether there was, in fact, “some evidence” to support the decision of
22 the hearing officer is a merits question that is not appropriately addressed in a motion to
23 dismiss.

24 Respondent also argues that Petitioner cites to a Seventh Circuit case that sets forth
25 a rule that has not been adopted by this circuit. [Doc. No. 5-1 at 3.] Petitioner cites to
26 *Meeks v. McBride*, 81 F.3d 717, 720-721 (7th Cir. 1996), where the Seventh Circuit ruled
27 that where a prison inmate produces exculpatory evidence that directly undermines
28 reliability of evidence in the record pointing to his violation of prison regulations, he is

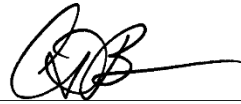
1 entitled under due process to an explanation of why disciplinary officials disregarded
2 exculpatory evidence and refused to find it persuasive. While that specific rule has not
3 necessarily been adopted by this Circuit (*see Hall v. Allison*, 2013 WL 1829816 (C.D.
4 Cal. Mar. 5, 2013)), there are due process requirements regarding prison disciplinary
5 convictions under *Hill* and *Wolff*. By alleging that there was “no evidence” to support the
6 conviction, Petitioner has sufficiently pled a federal due process claim. Whether that
7 allegation can be proven is not appropriately addressed in a motion to dismiss.

8 **CONCLUSION**

9 For the reasons set forth above, the Court **DECLINES** to adopt the Report and
10 **HEREBY DENIES** the motion to dismiss.

11 **IT IS SO ORDERED.**

12 Dated: May 5, 2017



13
14 Hon. Cathy Ann Bencivengo
15 United States District Judge
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